

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CR-3348-2015(O&M)**

Date of Decision : December 18, 2019

Asha Rani

.....Petitioner

***VERSUS***

Harish Chander

.....Respondent

**CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR**

Present : Mr. Junaid Singh, Advocate for  
Mr. Aditya Jain, Advocate  
for the petitioner.

Mr. Manoj Pundir, Advocate  
for the respondent.

**NIRMALJIT KAUR, J.**

The present revision is filed against the impugned judgment dated 7.2.2015 passed by the Appellate Authority, Yamuna Nagar at Jagadhri whereby the order and judgment passed by the Rent Controller, Yamuna Nagar at Jagadhri allowing the eviction petition was set-aside.

The petitioner filed the eviction petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 against the respondent from a shop on the ground of non-payment of rent and on the ground that the tenant had ceased to occupy the shop.

Upon notice, the respondent-tenant tendered the rent before the Rent Controller. However, the eviction was ordered on the second

ground. Aggrieved with the passing of the order of eviction, the respondent-tenant filed the appeal. The said appeal was allowed and the order of the Rent Controller was set-aside. The Appellate Authority set-aside the order firstly on the ground that AW2 Shadi Ram, who corroborated that Meter Reader takes the meter reading, did not know where the shop was situated. The next witness Sunil Virmani AW3 admitted that he came on the asking of the son of the landlady and did not receive any summons and it could not be proved that he was a neighbour of the landlady. Secondly, there was a discrepancy in the statements of AW3 Sunil Virmani and the landlady. The landlady stated that the shop was unoccupied for the last one year whereas Sunil Virmani AW3 stated that it had remained unoccupied for the last 2½ years. Thirdly, no Local Commission was appointed to find out the truth. Further, as per the Excise and Taxation Department, the respondent-tenant is still shows the address of the shop as his work place.

Learned counsel for the respondent while defending the order of the Appellate Authority relied upon the judgments of the learned Single Bench of this Court in the cases of Kuldip Chand Vs. Kishori Lal, 2009(2) R.C.R. (Rent) 91, Sohan Lal and anr. Vs. Gurbachan Singh, 1989(2) R.C.R.(Rent) 363 and Geeta Bhalla and others Vs. Krishan Kumar (dead) through LRs, 2006(2) R.C.R.(Rent) 379 to contend that a tenant could always contend that his business is seasonal and his premises were closed on account of his illness etc. and that mere consumption of electricity was not sufficient to show that the tenant has

ceased to occupy the premises.

After hearing learned counsel for the parties at length and having perused the record with the help of learned counsel for the parties as also the judgments relied upon by learned counsel for the respondent, this Court finds that the impugned judgment and order deserves to be set-aside in as much as:-

(a) Even if the statement of AW2 Shadi Ram is ignored, the statement of AW3 Sunil Virmani is sufficient. Sunil Virmani is the neighbour to the shop in question. The finding that there is discrepancy in the statements of Sunil Virmani and the landlady cannot be sustained. Sunil Virmani made the statement after about 1½ years of the statement of the landlady. Thus, it was correct for him to say that the shop was lying closed since 2½ years, whereas, it was correct for the landlady to have said 'one year' as she had filed her eviction petition in the year 2010. Infact, documents Exs.AW2/A, AW2/B and AW2/C wherein the Meter Reader has entered the building as lying locked in itself is a proof of the fact that the tenant was not occupying the premises any more. These documents have been ignored by the Appellate Authority. These documents pertained to the Department of UHBVN which shows the house was found locked from October, 2009 to almost February, 2010 except on one occasion i.e. August, 2009 and these documents were obtained in pursuance to the information under the Right to Information Act.

(b) The Appellate Authority also failed to appreciate that

the Process Server visited the demised premises on 15.8.2010 to serve the notice upon the respondent/tenant but respondent/tenant was not found there as shop was locked. The Process Server submitted his report which is as under:-

“It is requested that he visited the spot and made enquiry regarding Harish Chander but he does not met and shop was found locked. It has come to know that he has doing Balli depot at Chhachhroli Road, Opposite Bhavna Filling Station under the name and style of S.S.Trader (Golden Trading). Report is submitted.”

Admittedly, the electricity connection was disconnected on account of the failure of the landlady to deposit the electricity charges and that it was disconnected at the behest of the landlady cannot come to the help of the tenant as the tenant made no complaint of the said fact either to the Electricity Department or before any other authority and the submission that he did not need the electricity as he only worked in the morning time in the said shop is contrary to his own stand that he was continuously using the demised shop and doing the business of timber/ballis in the demised shop. Reliance placed on the statement of RW1 Raj Kumar, who deposed that the respondent was a tenant in the demised premises for the last 30 years is misplaced because RW1 Raj Kumar in his cross-examination admitted that the firm Nirmal Singh in which RW1 Raj Kumar was working had stopped business for the last 15-20 years. Meaning thereby, he was not in the knowledge of the latest position of the said shop.

The judgment rendered in the case of Sohan Lal (supra) too

does not help. Each case depends upon the facts of its case. There is no doubt that mere consumption of electricity by itself is not sufficient to hold that the tenant had ceased to occupy the premises but in the present case, the same stands supported by the report of the Process Server as reproduced above as also that the said electricity connection had not only been disconnected but no effort was made by the tenant to have it restored and nor any complaint was made. Moreover, the argument that the Meter Reader was not examined too cannot be sustained. The said documents were not disputed and were obtained in pursuance to an application under the Right to Information Act. Thus, it was proved beyond doubt that the premises were lying locked and the tenant had ceased to use it.

In view of the above, the revision is allowed and the order of the Appellate Authority is set-aside and the order of the Rent Controller allowing the eviction petition is upheld.

**December 18, 2019**

ajay-1

**(NIRMALJIT KAUR)**  
**JUDGE**

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No